

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Appeal from Order No.345 OF 2006.

Rahul Punjabi

..Appellant/
Original Defendants

versus

Ashwath Ram & Anr.

..Respondents.

Mr.S. Malik with Tanvir Shaikh for the Appellant

Mr.V.G.Mujumdar for the respondent nos.1 and 2.

Coram : S.R.Sathe, J.
Dated : 13th August, 2007

P.C.

1. Heard both the learned advocates at length.
2. Perused the papers.
3. Appellants, the original defendants who were restrained by temporary injunction Order from creating third party interest in the suit property till disposal of the suit, have filed the present appeal.
4. Brief facts giving rise to this appeal are as under:

It is the plaintiffs case that the suit

property is leasehold plot bearing No.264 admeasuring about 1086 sq. mts with a single storeyed structure standing thereon in Sindh Co-operative Housing Society, Aundh, Pune. The defendant is the lessee of the suit property, which is owned by Sindh Co-operative Housing Society Limited. Negotiations took place between the plaintiffs and defendants and defendants agreed to sale the suit property to plaintiffs for total consideration of Rs.1 Crore 38 lakhs. The defendant has received the suit property by way of gift from his mother. The agreement to sale was executed by defendants in favour of plaintiff on 17.3.2005 by accepting earnest money of Rs.15 Lakhs. The defendant was supposed to produce ULC permission, sanction lay out etc within two months from the agreement. It was also agreed that defendant shall hand over the possession of the suit plot along with the building standing thereon at the time of final conveyance.

4. The plaintiffs thereafter made specific arrangement with their bankers for payment. The parties also finalised the draft of final conveyance. However, as the defendants failed to

produce the necessary documents, plaintiffs called upon the defendants, by issuing e-mail dated 26.8.2005, to complete the agreement. The defendants however gave reply dated 6.9.2005 and even refused the execution of the suit agreement.

5. The defendants thereafter started demanding One Crore rupees more from the plaintiffs. The plaintiffs apprehended that defendants are likely to sell the suit plot to third person. Hence plaintiffs filed Special Civil Suit No.1138 of 2005 for specific performance of the agreement to sell. On the same day plaintiffs also filed an application Exhibit 5 and prayed for temporary injunction restraining the defendants from creating third party interest in the suit property till disposal of the suit. As the said application was granted the defendants have filed the present appeal.

6. In this appeal before me, the learned Advocate for the appellants-original defendants tried to argue that the initial agreement was only in respect of sale of suit plot and not for the one storeyed building standing thereon. Besides this, he also tried to rely on the provisions of Section

18 and 20 of the Specific Relief Act to show that there is variation in the terms of contract and it cannot be said that the plaintiffs would be entitled for final relief of specific performance. He, therefore, submitted that temporary injunction granted by the learned trial Judge be vacated. As against this, the learned Advocate for the plaintiffs supported the Order passed by the learned trial Judge.

7. From the perusal of the record, and in particular from the copy of the agreement dated 17.3.2005 it is very clear that defendants have agreed to sell the suit plot along with one storeyed structure standing thereon to plaintiffs for Rs.1,38,00,000/-, and the defendants have actually received Rs.15,00,000/- by way of earnest money. It is very clear that the defendants had also undertaken to seek necessary permission under ULC.

8. From the perusal of the affidavit filed by the plaintiff and his witness it is very clear that both of them have stated that the defendants have executed an agreement to sell in respect of the suit plot as well as one storeyed structure standing

thereon. Not only that, but we find that within a period of 8 days from the agreement, the plaintiffs made necessary arrangement with their bankers and also issued public notice stating therein the description of the property as well as the agreed consideration and the name of the executor. In spite of this the defendants had not immediately taken any objection for the same. So, the learned trial Judge has rightly observed that the plaintiffs have made out a prima facie case to show that the defendants have entered into an agreement to sell of the suit property, with plaintiffs. Prima facie there is nothing on record to show that there is any change or variation in the terms of the contract. Nor there is anything on record to show that the provisions of Section 18 and 20 of the Specific Relief Act will be invoked and as a result of the same plaintiff would be non suited. On the contrary, if the temporary injunction granted by the trial court is vacated then plaintiffs would suffer irreparable loss. They have already parted with huge amount of Rs.15 lakhs. Prima facie, there is nothing on record to show that the plaintiffs have committed any breach of the agreement or that they have failed to perform their part of the contract.

Hence, in order to protect the interest of the plaintiff and preserve the property, and to avoid multiplicity of proceedings, the learned trial Judge has rightly restrained the defendants from creating third party interest in the suit property till disposal of the suit. There is nothing on record to show that the descretion used by the learned trial Judge is arbitrary or capricious or the same is not warranted by the material on record.

. In view of the above, there is no necessity to interfere with the Order passed by the learned trial Judge. Hence, the appeal is dismissed in limine.

(S.R.Sathe, J.)